

Adopted	Rejected
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## COMMITTEE REPORT

YES:	9
NO:	0

### MR. SPEAKER:

*Your Committee on* Financial Institutions, to which was referred House Bill 1612, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008,
- 4       SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5       JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall
- 6       provide an accurate payoff amount for a first lien mortgage transaction
- 7       to the debtor not later than ten (10) calendar days after the creditor or
- 8       mortgage servicer receives the debtor's written request for the accurate
- 9       payoff amount. A creditor or mortgage servicer who fails to provide an
- 10      accurate payoff amount is liable for:
- 11      (a) one hundred dollars (\$100) if an accurate payoff amount is not
- 12      provided by the creditor or mortgage servicer not later than ten
- 13      (10) calendar days after the creditor or mortgage servicer receives
- 14      the debtor's first written request; and
- 15      (b) the greater of:

1 (i) one hundred dollars (\$100); or  
 2 (ii) the loan finance charge that accrues on the first lien  
 3 mortgage transaction from the date the creditor or mortgage  
 4 servicer receives the first written request until the date on  
 5 which the accurate payoff amount is provided;  
 6 if an accurate payoff amount is not provided by the creditor or  
 7 mortgage servicer not later than ten (10) calendar days after the  
 8 creditor or mortgage servicer receives the debtor's second written  
 9 request, and the creditor or mortgage servicer fails to comply with  
 10 subdivision (a).

11 (2) This subsection applies to a first lien mortgage transaction with  
 12 respect to which any installment or minimum payment due is  
 13 delinquent for at least sixty (60) days. The creditor, servicer, or the  
 14 creditor's agent shall acknowledge a written offer made in connection  
 15 with a proposed short sale not later than ten (10) business days after the  
 16 date of the offer if the offer complies with the requirements for a  
 17 qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The  
 18 creditor, servicer, or creditor's agent is required to acknowledge a  
 19 written offer made in connection with a proposed short sale from a  
 20 third party acting on behalf of the debtor only if the debtor has  
 21 provided written authorization for the creditor, servicer, or creditor's  
 22 agent to do so. Not later than thirty (30) business days after receipt of  
 23 an offer under this subsection, the creditor, servicer, or creditor's agent  
 24 shall respond to the offer with an acceptance or a rejection of the offer.  
 25 **If the written offer by or on behalf of the debtor is accepted,**  
 26 **payment made by or on behalf of the debtor in accordance with the**  
 27 **written offer constitutes payment in full satisfaction of the first lien**  
 28 **mortgage transaction unless:**

29 (a) the following statement, or a substantially similar  
 30 statement, appears in at least 14 point bold type on the first  
 31 page of the creditor's, servicer's, or creditor's agent's written  
 32 acceptance of the offer: "The debtor remains liable for any  
 33 amount still owed under the first lien mortgage transaction."; **and**  
 34

35 (b) the statement described in subdivision (a) is initialed by  
 36 each debtor liable under the first lien mortgage transaction.

37 As used in this subsection, "short sale" means a transaction in which  
 38 the property that is the subject of a first lien mortgage transaction is

1 sold for an amount that is less than the amount of the debtor's  
 2 outstanding obligation under the first lien mortgage transaction. A  
 3 creditor or mortgage servicer that fails to respond to an offer within the  
 4 time prescribed by this subsection is liable in accordance with 12  
 5 U.S.C. 2605(f) in any action brought under that section.

6 SECTION 2. IC 24-4.4-2-404.1 IS ADDED TO THE INDIANA  
 7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 8 [EFFECTIVE JULY 1, 2009]: **Sec. 404.1. (1) A person who:**

9 **(a) has been convicted of; or**

10 **(b) has pleaded guilty or nolo contendere to;**

11 **a felony under the laws of Indiana or any other jurisdiction may**  
 12 **not serve as an officer, a director, or an employee of a creditor or**  
 13 **serve in any similar capacity, unless the person obtains the written**  
 14 **consent of the director.**

15 **(2) A creditor that willfully permits a person to serve the**  
 16 **creditor in violation of subsection (1) is subject to a civil penalty of**  
 17 **five hundred dollars (\$500) for each day the violation continues.**

18 SECTION 3. IC 24-4.4-3-104, AS ADDED BY P.L.145-2008,  
 19 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2009]: **Sec. 104. (1)** In administering this article and in order  
 21 to determine whether the provisions of this article are being complied  
 22 with by persons engaging in acts subject to this article, the department  
 23 may examine the records of persons and may make investigations of  
 24 persons as may be necessary to determine compliance. Records subject  
 25 to examination under this section include the following:

26 **(a)** Training, operating, and policy manuals.

27 **(b)** Minutes of:

28 **(i)** management meetings; and

29 **(ii)** other meetings.

30 **(c)** Financial records, credit files, and data bases.

31 **(d)** Other records that the department determines are necessary to  
 32 perform its investigation or examination.

33 The department may also administer oaths or affirmations, subpoena  
 34 witnesses, **and** compel the attendance of witnesses, **including officers,**  
 35 **principals, mortgage loan originators, employees, independent**  
 36 **contractors, agents, and customers of licensees, and other**  
 37 **individuals or persons subject to this article. The department may**  
 38 **also** adduce evidence and require the production of any matter that is

1 relevant to an investigation. The department shall determine the  
2 sufficiency of the records maintained and whether the person has made  
3 the required information reasonably available. The records concerning  
4 any transaction subject to this article shall be retained for two (2) years  
5 after the making of the final entry relating to the first lien mortgage  
6 transaction, but in the case of a revolving first lien mortgage  
7 transaction the two (2) year period is measured from the date of each  
8 entry.

9 (2) The department's examination and investigatory authority under  
10 this article includes the following:

11 (a) The authority to require a creditor to refund overcharges  
12 resulting from the creditor's noncompliance with the terms of a  
13 first lien mortgage transaction.

14 (b) The authority to require a creditor to comply with the penalty  
15 provisions set forth in IC 24-4.4-2-201.

16 (c) The authority to investigate complaints filed with the  
17 department by debtors.

18 (3) The department shall be given free access to the records  
19 wherever the records are located. **In making any examination or**  
20 **investigation authorized by this article, the director may control**  
21 **access to any documents and records of the licensee or person**  
22 **under examination or investigation. The director may take**  
23 **possession of the documents and records or place a person in**  
24 **exclusive charge of the documents and records in the place where**  
25 **the documents are usually kept. During the period of control, a**  
26 **licensee or person may not remove or attempt to remove any of the**  
27 **documents and records except under a court order or with the**  
28 **consent of the director. Unless the director has reasonable grounds**  
29 **to believe the documents or records of the licensee or person have**  
30 **been, or are, at risk of being altered or destroyed for purposes of**  
31 **concealing a violation of this article, the licensee or person shall**  
32 **have access to the documents or records as necessary to conduct**  
33 **the licensee's or person's ordinary business affairs.** If the person's  
34 records are located outside Indiana, the records shall be made available  
35 to the department at a convenient location within Indiana, or the person  
36 shall pay the reasonable and necessary expenses for the department or  
37 the department's representative to examine the records where they are  
38 maintained. The department may designate comparable officials of the

1 state in which the records are located to inspect the records on behalf  
2 of the department.

3 (4) Upon a person's failure without lawful excuse to obey a  
4 subpoena or to give testimony and upon reasonable notice by the  
5 department to all affected persons, the department may apply to any  
6 civil court with jurisdiction for an order compelling compliance.

7 (5) The department shall not make public:

8 (a) the name or identity of a person whose acts or conduct the  
9 department investigates under this section; or

10 (b) the facts discovered in the investigation.

11 However, this subsection does not apply to civil actions or enforcement  
12 proceedings under this article."

13 Page 2, delete lines 20 through 42, begin a new paragraph and  
14 insert:

15 "SECTION 5. IC 24-4.5-2-209, AS AMENDED BY P.L.145-2008,  
16 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2009]: Sec. 209. ~~Right to Prepay~~ = (1) Subject to the  
18 provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer  
19 may prepay in full the unpaid balance of a consumer credit sale,  
20 refinancing, or consolidation at any time without penalty.

21 (2) At the time of prepayment of a credit sale not subject to the  
22 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total  
23 credit service charge, including the prepaid credit service charge, may  
24 not exceed the maximum charge allowed under this chapter for the  
25 period the credit sale was in effect.

26 (3) The creditor or mortgage servicer shall provide an accurate  
27 payoff of the consumer credit sale to the debtor within ten (10)  
28 calendar days after the creditor or mortgage servicer receives the  
29 debtor's written request for the accurate consumer credit sale payoff  
30 amount. A creditor or mortgage servicer who fails to provide the  
31 accurate consumer credit sale payoff amount is liable for:

32 (A) one hundred dollars (\$100) if an accurate consumer credit  
33 sale payoff amount is not provided by the creditor or mortgage  
34 servicer within ten (10) calendar days after the creditor or  
35 mortgage servicer receives the debtor's first written request;  
36 and

37 (B) the greater of:

38 (i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided; if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **If the written offer by or on behalf of the debtor is accepted, payment made by or on behalf of the debtor in accordance with the written offer constitutes payment in full satisfaction of the mortgage transaction unless:**

**(a) the following statement, or a substantially similar statement, appears in at least 14 point bold type on the first page of the creditor's, servicer's, or creditor's agent's written acceptance of the offer: "The debtor remains liable for any amount still owed under the mortgage transaction."; and**

1           **(b) the statement described in subdivision (a) is initialed by**  
 2           **each debtor liable under the mortgage transaction.**

3           As used in this subsection, "short sale" means a transaction in which  
 4           the property that is the subject of a mortgage transaction is sold for an  
 5           amount that is less than the amount of the debtor's outstanding  
 6           obligation under the mortgage transaction. A creditor or mortgage  
 7           servicer that fails to respond to an offer within the time prescribed by  
 8           this subsection is liable in accordance with 12 U.S.C. 2605(f) in any  
 9           action brought under that section.

10          SECTION 6. IC 24-4.5-3-105, AS AMENDED BY P.L.90-2008,  
 11          SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12          JULY 1, 2009]: Sec. 105. Unless the loan is made subject to  
 13          IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect  
 14          to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201),  
 15          providing payoff amounts (IC 24-4.5-3-209), **providing property tax**  
 16          **information (IC 24-4.5-3-701)**, and powers and functions of the  
 17          department (IC 24-4.5-6-104), "consumer loan" does not include a ~~loan~~  
 18          ~~primarily secured by an interest in land which is a first lien mortgage~~  
 19          ~~transaction. (as defined in IC 24-4.5-1-301(17)).~~

20          SECTION 7. IC 24-4.5-3-209, AS AMENDED BY P.L.145-2008,  
 21          SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22          JULY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the  
 23          provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor  
 24          may prepay in full the unpaid balance of a consumer loan, refinancing,  
 25          or consolidation at any time without penalty. With respect to a  
 26          consumer loan that is primarily secured by an interest in land, a lender  
 27          may contract for a penalty for prepayment of the loan in full, not to  
 28          exceed two percent (2%) of any amount prepaid within sixty (60) days  
 29          of the date of the prepayment in full, after deducting all refunds and  
 30          rebates as of the date of the prepayment. However, the penalty may not  
 31          be imposed:

- 32           (a) if the loan is refinanced or consolidated with the same
- 33           creditor;
- 34           (b) for prepayment by proceeds of any insurance or acceleration
- 35           after default; or
- 36           (c) after three (3) years from the contract date.

37          (2) At the time of prepayment of a consumer loan not subject to the  
 38          provisions of rebate upon prepayment (IC 24-4.5-3-210), the total

1 finance charge, including the prepaid finance charge but excluding the  
 2 loan origination fee allowed under IC 24-4.5-3-201, may not exceed the  
 3 maximum charge allowed under this chapter for the period the loan was  
 4 in effect. For the purposes of determining compliance with this  
 5 subsection, the total finance charge does not include the following:

6 (a) The loan origination fee allowed under IC 24-4.5-3-201.

7 (b) The debtor paid mortgage broker fee, if any, paid to a person  
 8 who does not control, is not controlled by, or is not under  
 9 common control with, the creditor holding the loan at the time a  
 10 consumer loan is prepaid.

11 (3) The creditor or mortgage servicer shall provide an accurate  
 12 payoff of the consumer loan to the debtor within ten (10) calendar days  
 13 after the creditor or mortgage servicer receives the debtor's written  
 14 request for the accurate consumer loan payoff amount. A creditor or  
 15 mortgage servicer who fails to provide the accurate consumer loan  
 16 payoff amount is liable for:

17 (a) one hundred dollars (\$100) if an accurate consumer loan  
 18 payoff amount is not provided by the creditor or mortgage  
 19 servicer within ten (10) calendar days after the creditor or  
 20 mortgage servicer receives the debtor's first written request; and

21 (b) the greater of:

22 (i) one hundred dollars (\$100); or

23 (ii) the loan finance charge that accrues on the loan from the  
 24 date the creditor or mortgage servicer receives the first written  
 25 request until the date on which the accurate consumer loan  
 26 payoff amount is provided;

27 if an accurate consumer loan payoff amount is not provided by the  
 28 creditor or mortgage servicer within ten (10) calendar days after  
 29 the creditor or mortgage servicer receives the debtor's second  
 30 written request, and the creditor or mortgage servicer failed to  
 31 comply with subdivision (a).

32 A liability under this subsection is an excess charge under  
 33 IC 24-4.5-5-202.

34 (4) As used in this subsection, "mortgage transaction" means a  
 35 consumer credit loan in which a mortgage, deed of trust, or a land  
 36 contract that constitutes a lien is created or retained against land upon  
 37 which there is a dwelling that is or will be used by the debtor primarily  
 38 for personal, family, or household purposes. This subsection applies to



a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **If the written offer by or on behalf of the debtor is accepted, payment made by or on behalf of the debtor in accordance with the written offer constitutes payment in full satisfaction of the mortgage transaction unless:**

**(a) the following statement, or a substantially similar statement, appears in at least 14 point bold type on the first page of the creditor's, servicer's, or creditor's agent's written acceptance of the offer: "The debtor remains liable for any amount still owed under the mortgage transaction."; and**

**(b) the statement described in subdivision (a) is initialed by each debtor liable under the mortgage transaction.**

As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section."

Delete page 3.

Page 4, delete lines 1 through 14.

Page 5, line 27, delete ", at a location designated by the" and insert ".".

Page 5, delete line 28.

Page 5, line 31, delete "Subject to subsection (b),".

Page 5, delete lines 32 through 42.

- 1 Page 6, delete lines 1 through 18.
- 2 Page 6, line 19, delete "(c)".
- 3 Page 5, run in line 31 through page 6, line 19.
- 4 Page 6, delete line 20.
- 5 Page 6, line 21, delete "(2)" and insert "(1)".
- 6 Page 6, line 22, delete "(3)" and insert "(2)".
- 7 Page 6, line 27, delete "(d)" and insert "(b)".
- 8 Page 6, line 28, delete "(c)" and insert "(a)".
- 9 Page 6, delete lines 30 through 42.
- 10 Delete pages 7 through 9.
- 11 Page 10, delete lines 1 through 34.
- 12 Page 10, line 42, after "13." delete "A" and insert **"(a) Except as**
- 13 **provided in subsection (b), a"**.
- 14 Page 11, between lines 3 and 4, begin a new paragraph and insert:
- 15 **"(b) If a lessee makes a payment that exceeds the sum of the**
- 16 **scheduled rental payment and any permitted additional charges**
- 17 **that are due, the lessor may hold the excess funds in a reserve**
- 18 **account subject to the following conditions:**
- 19 **(1) The balance of the lessee's reserve account may not exceed**
- 20 **the amount of the next scheduled rental payment.**
- 21 **(2) If the balance in the lessee's reserve account reaches the**
- 22 **limit specified in subdivision (1), the lessor shall apply the**
- 23 **funds to the lessee's next scheduled rental payment.**
- 24 **(c) This section may not be construed to preclude a lessor from**
- 25 **accepting and applying multiple rental payments before the rental**
- 26 **payments' scheduled due dates."**
- 27 Page 34, line 21, strike "Indictment for,".
- 28 Page 34, line 21, delete "conviction" and insert "Conviction".
- 29 Page 34, line 21, after "conviction of" delete ",".
- 30 Page 34, line 31, after "any" insert **"contract"**.
- 31 Page 34, line 34, strike "fee,".
- 32 Page 34, line 37, strike "fee,".
- 33 Page 34, line 39, strike "his" and insert **"the licensee's"**.
- 34 Page 35, line 10, after "Providing a" insert **"contract"**.
- 35 Page 35, line 34, after "a" insert **"contract"**.
- 36 Page 37, line 14, strike "the state of Indiana,".
- 37 Page 37, line 18, reset in roman "the department".
- 38 Page 37, line 27, strike "of the".

- 1 Page 37, strike lines 28 through 29.
- 2 Page 37, line 30, strike "chapter are under indictment for a felony".
- 3 Page 37, line 31, strike "under the laws of Indiana or any other".
- 4 Page 37, strike line 32.
- 5 Page 37, line 33, strike "(2) Any".
- 6 Page 37, line 41, delete ":".
- 7 Page 37, strike line 42.
- 8 Page 38, line 1, strike "(B)".
- 9 Page 38, line 2, after "felony;" insert "**or**".
- 10 Page 38, strike line 3.
- 11 Page 38, line 18, delete "Before providing debt".
- 12 Page 38, delete lines 19 through 42.
- 13 Page 39, line 1, delete "(b)".
- 14 Page 38, run in line 18 through page 39, line 1.
- 15 Page 39, line 3, delete "financial" and insert "**budget**".
- 16 Page 39, line 15, delete "(c)" and insert "**(b)**".
- 17 Page 39, line 17, after "of the" insert "**budget**".
- 18 Page 39, line 18, delete "(b)" and insert "**(a)**".
- 19 Page 39, line 23, after "person" insert ", **where reasonably**
- 20 **available to residents in Indiana,**".
- 21 Page 39, line 23, delete "financial" and insert "**budget**".
- 22 Page 39, line 24, delete "(b);" and insert "**(a);**".
- 23 Page 39, line 35, delete "(d)" and insert "**(c)**".
- 24 Page 39, line 35, delete "(e), (f), and (g)," and insert "**(d), (e), and**
- 25 **(f),**".
- 26 Page 40, delete lines 4 through 5.
- 27 Page 40, line 6, delete "(C)" and insert "**(B)**".
- 28 Page 40, line 9, delete "(D)" and insert "**(C)**".
- 29 Page 40, line 11, delete "(E)" and insert "**(D)**".
- 30 Page 40, line 15, delete "(e)" and insert "**(d)**".
- 31 Page 40, line 18, delete "(d)" and insert "**(c)**".
- 32 Page 40, line 19, delete "14 point bold" and insert "**clear and**
- 33 **conspicuous**".
- 34 Page 40, line 21, before "IMPORTANT" insert ""
- 35 Page 40, delete lines 25 through 26.
- 36 Page 40, line 27, delete "(3)" and insert "**(2)**".
- 37 Page 40, line 30, after "licensee" insert ""
- 38 Page 40, line 31, delete "(f)" and insert "**(e)**".

- 1 Page 40, line 34, delete "(d)" and insert "(c)".
- 2 Page 40, line 35, delete "14 point bold" and insert "**clear and**
- 3 **conspicuous**".
- 4 Page 40, line 38, delete "(1)".
- 5 Page 40, delete lines 41 through 42.
- 6 Page 41, line 3, delete "(g)" and insert "(f)".
- 7 Page 41, line 5, delete "(d)" and insert "(c)".
- 8 Page 41, line 6, delete "14 point bold" and insert "**clear and**
- 9 **conspicuous**".
- 10 Page 43, line 30, strike "direct deposit." and insert "**automated**
- 11 **clearinghouse withdrawal as authorized by the contract debtor.**".
- 12 Page 43, line 32, after "creditors" insert "**in the debt management**
- 13 **plan**".
- 14 Page 43, line 32, after "the" insert "**cancellation by the**".
- 15 Page 44, line 32, after "plan." insert "**The following must be**
- 16 **included in the budget analysis:**
- 17 (1) **Documentation and verification of all income considered.**
- 18 **All income verification shall be dated not more than sixty (60)**
- 19 **days before the completion of the budget analysis.**
- 20 (2) **Monthly living expense figures must be reasonable for the**
- 21 **particular family size and part of the state.**
- 22 (3) **Documentation and verification, either by a current credit**
- 23 **bureau report, current debtor account statements, or direct**
- 24 **documentation from the creditor, of monthly debt payments**
- 25 **and balances to be paid outside the plan.**
- 26 (4) **Documentation and verification, either by a current credit**
- 27 **bureau report, current debtor account statements, or direct**
- 28 **documentation from the creditor, of the monthly debt**
- 29 **payments and current balances to be paid through the plan.**
- 30 (5) **The date of the budget analysis and the signature of the**
- 31 **debtor.**".
- 32 Page 44, line 35, delete "twenty-four (24)" and insert "**thirty (30)**".
- 33 Page 44, line 36, after "of the" insert "**contract**".
- 34 Page 44, line 37, after "for the" insert "**contract**".
- 35 Page 44, line 37, after "and the" insert "**contract**".
- 36 Page 44, line 41, after "figures." insert "**A licensee may not**
- 37 **increase the monthly fee percentage under section 8.3(c)(2)(A) of**
- 38 **this chapter during the term of the original debt management plan**

- 1 **agreement."**
- 2 Page 45, line 41, delete "Unless fifty-one percent (51%) or more, in
- 3 number".
- 4 Page 45, delete line 42.
- 5 Page 46, delete lines 1 through 3.
- 6 Page 45, run in line 41 through page 46, line 4.
- 7 Page 46, line 8, delete "payment disbursed to creditors;" and insert
- 8 **"amount the contract debtor agrees to pay through the licensee,**
- 9 **divided into equal monthly payments over the term of the**
- 10 **agreement;"**.
- 11 Page 46, line 10, after "The" insert **"monthly service"**.
- 12 Page 46, line 11, after "a month." insert **"The amount of a set up**
- 13 **fee under subdivision (1) may not be included in the calculation of**
- 14 **the monthly service fee."**
- 15 Page 47, line 9, delete "14 point bold" and insert **"clear and**
- 16 **conspicuous"**.
- 17 Page 48, delete lines 4 through 42, begin a new paragraph and
- 18 insert:
- 19 "SECTION 46. IC 28-1-29-8.8 IS ADDED TO THE INDIANA
- 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 21 [EFFECTIVE JULY 1, 2009]: **Sec. 8.8. (a) If a contract debtor fails**
- 22 **to make a payment to a licensee within sixty (60) days after the**
- 23 **date a payment is due under an agreement, the agreement is**
- 24 **considered canceled by the contract debtor. A contract debtor may**
- 25 **file a letter of continuation of an agreement even if the contract**
- 26 **debtor did not make a payment within sixty (60) days after a**
- 27 **payment was due. All of the following apply to a letter of**
- 28 **continuation of an agreement:**
- 29 **(1) A contract debtor may file only one (1) letter of**
- 30 **continuation with a licensee for any agreement.**
- 31 **(2) A letter of continuation must contain a detailed**
- 32 **explanation of the reason or reasons for the missed payment.**
- 33 **(3) If an agreement for which a letter of continuation that**
- 34 **meets the requirements of this subsection is filed, the**
- 35 **agreement remains in effect and subject to cancellation for**
- 36 **any future failure to make a payment as described in this**
- 37 **subsection.**
- 38 **(4) An agreement between a licensee and a contract debtor**

1           shall clearly provide for one (1) letter of continuation by a  
2           contract debtor.

3           **(5) A contract debtor may not file a letter of continuation with**  
4           **a licensee at the beginning of an agreement.**

5           **(b) If a licensee or a contract debtor terminates an agreement,**  
6           **the licensee shall immediately return to the contract debtor any**  
7           **money of the contract debtor held in trust for the benefit of the**  
8           **contract debtor.**

9           SECTION 47. IC 28-1-29-9, AS AMENDED BY P.L.217-2007,  
10          SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11          JULY 1, 2009]: Sec. 9. (a) All funds received by a licensee or the  
12          licensee's agent from and for the purpose of paying bills, invoices, or  
13          accounts of a debtor constitute trust funds owned by and belonging to  
14          the person from whom they were received. All such funds received by  
15          a licensee shall be separated from the funds of the licensee not later  
16          than the end of the same business day following receipt by the licensee.  
17          All such funds shall thereafter be kept separate and apart at all times  
18          from funds belonging to the licensee or any of its officers, employees,  
19          or agents and may be used for no purpose other than paying bills,  
20          invoices, or accounts of said persons. All such trust funds received at  
21          the main or branch offices of a licensee shall be deposited in a bank or  
22          banks in an account or accounts in the name of the licensee designated  
23          "trust account", or by some other appropriate name indicating that the  
24          funds are not the funds of the licensee or its officers, employees, or  
25          agents, on or before the close of the same banking day following  
26          receipt.

27          (b) Prior to separation and deposit by the licensee, the funds may  
28          only be used by the licensee for the making of change or the cashing of  
29          checks in the normal course of its business. Such funds are not subject  
30          to attachment, levy of execution, or sequestration by order of court  
31          except by an obligor for whom a licensee is acting as an agent in  
32          paying bills, invoices, or accounts.

33          (c) Each licensee shall make remittances within thirty (30) days  
34          after initial receipt of funds, and thereafter remittances shall be made  
35          within fifteen (15) days of receipt, less fees and costs, unless the  
36          reasonable payment of one (1) or more of the debtor's obligations  
37          requires that the funds be held for a longer period so as to accumulate  
38          a sum certain. For the purpose of this section, the cancellation fee set

1       forth in section 8(g) of this chapter shall not be deemed an obligation  
 2       of the debtor. All money paid to a licensee by or on behalf of a  
 3       contract debtor for distribution to creditors under a plan is held in  
 4       trust. On or before the close of the same banking day following  
 5       receipt, the licensee shall deposit the money in a trust account  
 6       established for the benefit of the contract debtor to whom the  
 7       licensee is furnishing debt management services.

8       (b) A licensee shall do the following:

9           (1) Maintain separate records of account for each individual  
 10          to whom the licensee is furnishing debt management services.

11          (2) Disburse money paid by or on behalf of the contract  
 12          debtor to creditors of the contract debtor as disclosed in the  
 13          agreement.

14          (3) Make remittances not later than thirty (30) days after  
 15          initial receipt of funds. After the initial receipt of funds,  
 16          remittances shall be made not later than fifteen (15) days after  
 17          receipt of funds, less fees and costs, unless the reasonable  
 18          payment of one (1) or more of the contract debtor's  
 19          obligations requires that the funds be held for a longer period  
 20          to accumulate a sum certain. For the purpose of this section,  
 21          the close-out fee set forth in section 8.3(d) of this chapter shall  
 22          not be considered an obligation of the contract debtor.

23          (4) Retain in the contract debtor's trust account, for charges,  
 24          an amount less than or equal to the sum of one (1) month's fee  
 25          as permitted by section 8.3(c)(2) of this chapter plus the  
 26          close-out fee as permitted by section 8.3(d) of this chapter,  
 27          unless a greater amount is approved in writing by the  
 28          department.

29          (5) Promptly:

30           (A) correct any payments that are not made or that are  
 31           misdirected as a result of an error by the licensee or other  
 32           person in control of the trust account; and

33           (B) reimburse the contract debtor for any costs or fees  
 34           imposed by a creditor as a result of the failure to pay or  
 35           misdirection.

36       (c) A licensee may not commingle money in a trust account  
 37       established for the benefit of contract debtors to whom the licensee  
 38       is furnishing debt management services with money of other

1 persons.

2 (d) A trust account must at all times have a cash balance equal  
3 to the sum of the balances of each contract debtor's account.

4 (e) If a licensee has established a trust account under subsection  
5 (a), the licensee shall reconcile the trust account at least every  
6 thirty (30) days after receipt of the bank statement. The  
7 reconciliation must compare the cash balance in the trust account  
8 with the sum of the balances in each contract debtor's account. If  
9 the licensee or the licensee's designee has more than one (1) trust  
10 account, each trust account must be individually reconciled.

11 (f) If a licensee discovers, or has a reasonable suspicion of,  
12 embezzlement or other unlawful appropriation of money held in  
13 trust, the licensee shall:

- 14 (1) immediately notify the department in writing; and
- 15 (2) unless the department by rule provides otherwise, give  
16 notice to the department describing the remedial action taken  
17 or to be taken not later than five (5) days after the licensee  
18 discovers, or has a reasonable suspicion of, the embezzlement  
19 or other unlawful appropriation.

20 (g) If a contract debtor terminates an agreement or it becomes  
21 reasonably apparent to a licensee that a plan has failed, the licensee  
22 shall promptly refund to the contract debtor all money paid by or  
23 on behalf of the contract debtor that has not been paid to creditors  
24 less fees that are payable to the licensee under section 8.3(e) of this  
25 chapter.

26 (h) Before relocating a trust account from one (1) bank to  
27 another, a licensee shall inform the department of the name,  
28 business address, and telephone number of the new bank. As soon  
29 as practicable, the licensee shall inform the department of the  
30 account number of the trust account at the new bank.

31 ~~(d)~~ (i) At least once every three (3) months the licensee shall render  
32 an accounting to the **contract** debtor which must itemize the total  
33 amount received from the **contract** debtor, the total amount paid each  
34 creditor, the amount of charges deducted, the amount of fair share fees  
35 received **or withheld** by the licensee from each of the contract debtor's  
36 creditors, and any amount held in reserve. A licensee shall, in addition  
37 thereto, render such an accounting to a **contract** debtor within seven  
38 (7) days after written demand, but not more than three (3) per six (6)



- 1 month period.
- 2 ~~(e)~~ **(j)** Upon the completion or termination of a contract between a
- 3 licensee and a contract debtor, the licensee shall mail to the contract
- 4 debtor a statement:
- 5 (1) indicating that the licensee no longer holds funds in trust for
- 6 the contract debtor; and
- 7 (2) listing the name and address of:
- 8 (A) each creditor paid in full; and
- 9 (B) any creditors remaining unpaid."
- 10 Delete pages 49 through 50.
- 11 Page 51, delete lines 1 through 12.
- 12 Page 51, line 19, after "a" insert "**contract**".
- 13 Page 51, line 20, after "from a" insert "**contract**".
- 14 Page 51, line 22, after "the" insert "**contract**".
- 15 Page 52, line 5, after "agreements." insert "**It is not a violation of**
- 16 **this subsection for a licensee to use the number of successfully**
- 17 **completed debt management plans as a criterion for compensation**
- 18 **for the licensee's employees."**
- 19 Page 52, line 6, after "lead a" insert "**contract**".
- 20 Page 52, line 8, after "settlement, the" insert "**contract**".
- 21 Page 52, line 32, after "a" insert "**contract**".
- 22 Page 53, line 28, delete "(a) If:".
- 23 Page 53, delete lines 29 through 42.
- 24 Page 54, line 1, delete "(c)".
- 25 Page 53, run in line 28 through page 54, line 1.
- 26 Page 57, line 4, delete "Indiana," and insert "**Indiana**".
- 27 Page 57, delete line 5.
- 28 Page 83, line 30, after "institutions" insert "**or credit union service**
- 29 **organizations**".
- 30 Page 91, line 36, delete "domestic".
- 31 Page 96, line 19, delete ":".
- 32 Page 96, line 20, strike "(1) is under indictment for a felony".
- 33 Page 96, line 21, strike "under the laws of Indiana or any other".
- 34 Page 96, strike line 22.
- 35 Page 96, line 23, strike "(2)".
- 36 Page 96, line 29, delete ":".
- 37 Page 96, strike line 30.
- 38 Page 96, line 31, strike "(B)".

- 1 Page 96, line 32, after "felony;" insert "**or**".
- 2 Page 96, strike line 33.
- 3 Page 97, line 14, delete ", at a location" and insert ".".
- 4 Page 97, delete line 15.
- 5 Page 97, line 25, delete "." and insert "**as long as the retention**
- 6 **period does not exceed ten (10) days.**".
- 7 Page 97, line 40, delete "." and insert "**as long as the retention**
- 8 **period does not exceed ten (10) days.**".
- 9 Page 99, line 17, strike "any of the".
- 10 Page 99, strike lines 18 through 20.
- 11 Page 99, line 21, strike "under the laws of".
- 12 Page 99, strike line 22.
- 13 Page 99, line 23, strike "(2)".
- 14 Page 99, line 23, delete "The" and insert "the".
- 15 Page 99, line 32, delete ":".
- 16 Page 99, strike line 33.
- 17 Page 99, line 34, strike "(B)".
- 18 Page 99, line 35, after "felony;" insert "**or**".
- 19 Page 99, strike line 36.
- 20 Page 100, line 5, delete ", at a location" and insert ".".
- 21 Page 100, delete line 6.
- 22 Page 102, line 21, strike "any of the".
- 23 Page 102, strike lines 22 through 23.
- 24 Page 102, line 24, strike "of this chapter, is under indictment for a
- 25 felony".
- 26 Page 102, line 25, strike "under the laws of Indiana or any other".
- 27 Page 102, strike line 26.
- 28 Page 102, line 27, strike "(2)".
- 29 Page 102, line 27, delete "The" and insert "the".
- 30 Page 102, line 36, delete ":".
- 31 Page 102, strike line 37.
- 32 Page 102, line 38, strike "(B)".
- 33 Page 102, line 39, after "felony;" insert "**or**".
- 34 Page 102, strike line 40.
- 35 Page 103, line 9, delete ", at a location" and insert ".".
- 36 Page 103, delete line 10.
- 37 Page 103, between lines 31 and 32, begin a new paragraph and
- 38 insert:

"SECTION 104. IC 28-11-1-3, AS AMENDED BY P.L.217-2007, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The ultimate authority for and the powers, duties, management, and control of the department are vested in the following ~~seven (7)~~ **nine (9)** members:

(1) The director of the department, who serves as an ex officio, voting member.

(2) The following six (6) members appointed by the governor as follows:

(A) Three (3) members must have practical experience at the executive level of a:

- (i) state chartered bank;
- (ii) state chartered savings association; or
- (iii) state chartered savings bank.

(B) One (1) member must have practical experience at the executive level as a lender licensed under IC 24-4.5.

(C) One (1) member must have practical experience at the executive level of a state chartered credit union.

(D) One (1) member must be appointed with due regard for the consumer, agricultural, industrial, and commercial interests of Indiana.

**(3) One (1) member appointed by the speaker of the house of representatives with due regard for the consumer, agricultural, industrial, and commercial interests of Indiana.**

**(4) One (1) member appointed by the minority leader of the house of representatives with due regard for the consumer, agricultural, industrial, and commercial interests of Indiana.**

(b) Not more than three (3) members appointed by the governor under subsection (a)(2) after June 30, 2006, may be affiliated with the same political party.

SECTION 105. IC 28-11-1-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) A member appointed by the speaker of the house of representatives under section 3(a)(3) of this chapter serves a term of four (4) years but at the pleasure of the speaker of the house of representatives.**

**(b) The speaker of the house of representatives may reappoint a member appointed under section 3(a)(3) of this chapter.**

1       (c) A member appointed by the minority leader of the house of  
2 representatives under section 3(a)(4) of this chapter serves a term  
3 of four (4) years but at the pleasure of the minority leader of the  
4 house of representatives.

5       (d) The minority leader of the house of representatives may  
6 reappoint a member appointed under section 3(a)(4) of this  
7 chapter."

8       Page 103, line 35, delete "four (4)" and insert "five (5)".

9       Page 104, line 6, delete "four (4)" and insert "five (5)".

10       Page 104, between lines 17 and 18, begin a new paragraph and  
11 insert:

12       "SECTION 107. IC 28-11-1-10 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) ~~Four (4)~~  
14 **Five (5)** members constitute a quorum.

15       (b) Unless otherwise provided for in this title, if a quorum is present,  
16 a majority of the members present is sufficient for the department to  
17 take action."

18       Page 107, line 37, before "IC 28-1-29-7" insert "IC 24-4.4-1-203;  
19 IC 24-4.4-3-112; IC 24-4.5-1-203; IC 24-4.5-6-114;".

20       Page 107, between lines 38 and 39, begin a new paragraph and  
21 insert:

22       "SECTION 113. [EFFECTIVE UPON PASSAGE] (a) **The speaker**  
23 **of the house of representatives shall make the first appointment to**  
24 **the department of financial institutions under IC 28-11-1-3(a)(3),**  
25 **as amended by this act, not later than July 1, 2009.**

26       (b) **The minority leader of the house of representatives shall**  
27 **make the first appointment to the department of financial**  
28 **institutions under IC 28-11-1-3(a)(4), as amended by this act, not**

- 1       **later than July 1, 2009.**
- 2       **(c) This SECTION expires July 1, 2010."**
- 3       Renumber all SECTIONS consecutively.  
      (Reference is to HB 1612 as introduced.)

**and when so amended that said bill do pass.**

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Representative Bardon